

AMENDED IN SENATE JULY 2, 2003  
AMENDED IN ASSEMBLY JUNE 2, 2003  
AMENDED IN ASSEMBLY MAY 7, 2003  
AMENDED IN ASSEMBLY APRIL 23, 2003

CALIFORNIA LEGISLATURE—2003–04 REGULAR SESSION

**ASSEMBLY BILL**

**No. 1331**

**Introduced by Assembly Members Wesson and Jerome Horton**

February 21, 2003

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An act to add Chapter 4.8 (commencing with Section 832.91) to Title 3 of Part 2 of the Penal Code, relating to peace officers.

LEGISLATIVE COUNSEL'S DIGEST

AB 1331, as amended, Wesson. Peace officers: whistleblower protection.

Existing law provides for immunity from civil and criminal liability for peace officers for their discretionary acts in arrest situations, as specified, and as limited in case law. However, existing law provides for civil causes of action against a person or persons for damages and other relief for interference with rights secured by the constitutions and laws of California and the United States. Existing law also allows the Attorney General to sue for equitable and declaratory relief against a person engaging in a pattern or practice of law enforcement conduct that deprives any person of state or federal constitutional or legal rights.

This bill would *state legislative intent with respect to the ability of peace officers to report waste, fraud, abuse of authority, violation of law, or threat to public health without fear of retribution. This bill would*

require the Attorney General to ~~establish and administer a whistleblower protection policy for~~ develop model protocols for reporting issuance of an illegal order, improper governmental activity, or improper use of force for use by peace officers, no later than January 1, 2005.

The bill would also create an offense for the intentional retaliation against a peace officer for having reported ~~unlawful conduct or the issuance of an illegal order, improper governmental activity of, or improper use of force by~~ another peace officer, punishable by imprisonment in a county jail for a period not exceeding one year, imprisonment in the state prison, and a fine not exceeding \$10,000, or by both that imprisonment and fine.

By creating a new crime, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

*The people of the State of California do enact as follows:*

1 SECTION 1. *The Legislature finds and declares that all peace*  
 2 *officers throughout the state should be free to report waste, fraud,*  
 3 *abuse of authority, violation of law, or threat to public health*  
 4 *without fear of retribution. The Legislature further finds and*  
 5 *declares that law enforcement best serves the citizenry and protects*  
 6 *the public when peace officers can be candid and honest without*  
 7 *reservation.*  
 8 *It is the intent of the Legislature that local peace officers*  
 9 *throughout the state who witness the issuance of an illegal order,*  
 10 *as defined in subdivision (c) of Section 832.91 of the Penal Code,*  
 11 *improper governmental activity, as defined in subdivision (b) of*  
 12 *Section 8547.2 of the Government Code, or improper use of force*  
 13 *that falls outside the scope of Section 835, 835a, or 843 of the*  
 14 *Penal Code, be encouraged to report this conduct or activity to*  
 15 *their immediate supervisors, sheriff, or chief of police. All*

1 *disclosures about these activities shall be considered protected*  
2 *disclosures, as defined in subdivision (b) of Section 832.91 of the*  
3 *Penal Code. The Legislature strongly encourages local law*  
4 *enforcement agencies to adopt protocols for reporting this conduct*  
5 *or activity.*

6 SEC. 2. Chapter 4.8 (commencing with Section 832.91) is  
7 added to Title 3 of Part 2 of the Penal Code, to read:

8  
9 CHAPTER 4.8. WHISTLEBLOWER PROTECTION FOR PEACE  
10 OFFICERS  
11

12 ~~832.91. (a) In order to promote a culture of accountability,~~  
13 ~~and detect and deter misconduct, the Attorney General shall,~~  
14 ~~commencing January 1, 2005, establish and administer a~~  
15 ~~whistleblower protection policy for peace officers, as defined in~~  
16 ~~Section 830.1.~~

17 ~~(b) The policy shall protect peace officers who report, based on~~  
18 ~~personal knowledge, any unlawful conduct and improper activity~~  
19 ~~by peace officers and shall prohibit retaliation against any peace~~  
20 ~~officer who reports that conduct or activity or serves as a witness~~  
21 ~~about that conduct or activity in any proceeding.~~

22 ~~(c) Any person who intentionally engages in acts of retaliation~~  
23 ~~against a peace officer for having reported unlawful conduct or~~  
24 ~~improper activity by a peace officer is punishable by imprisonment~~  
25 ~~in a county jail for a period not to exceed one year and a fine not~~  
26 ~~to exceed ten thousand dollars (\$10,000).~~

27 ~~(d) For purposes of this section, "retaliation" means discharge~~  
28 ~~from employment, demotion, suspension or threats to do the same,~~  
29 ~~or any other acts of reprisal, coercion, or threats to do the same.~~

30 ~~(e) In addition to all other penalties provided by law, any person~~  
31 ~~who intentionally engages in acts of retaliation against a peace~~  
32 ~~officer for having reported unlawful conduct or improper activity~~  
33 ~~by a peace officer shall be liable in an action for damages brought~~  
34 ~~against him or her by the injured party.~~

35 ~~(f) Nothing in this article shall be deemed to diminish the~~  
36 ~~rights, privileges, or remedies of any employee under any other~~  
37 ~~federal or state law or under any employment contract or collective~~  
38 ~~bargaining agreement.~~

39 ~~832.91. The Attorney General shall, no later than January 1,~~  
40 ~~2005, develop model protocols for reporting the issuance of an~~

1 *illegal order; improper governmental activity, as defined in*  
2 *subdivision (b) of Section 8547.2 of the Government Code, or*  
3 *improper use of force that falls outside the scope of Section 835,*  
4 *835a, or 843 of the Penal Code, for use by any law enforcement*  
5 *agency that requests them.*

6 (a) *The model protocols shall contain explicit language to*  
7 *protect peace officers, as defined in Section 830.1 of the Penal*  
8 *Code, who report, based on personal knowledge, any improper*  
9 *activity as defined in subdivision (b) of Section 8457.2 of the*  
10 *Government Code, improper use of force that falls outside the*  
11 *scope of Section 835, 835a, or 843 of the Penal Code, or issuance*  
12 *of an illegal order. The protocols shall prohibit retaliation against*  
13 *any peace officer who reports that conduct or activity or serves as*  
14 *a witness to that conduct or activity in any proceeding.*

15 (b) *The model protocols shall state that “protected disclosure”*  
16 *means any good faith communication made with the intent of*  
17 *imparting information that may evidence any of the following:*

18 (1) *The issuance of an illegal order.*

19 (2) *Improper governmental activity.*

20 (3) *Improper use of force.*

21 (4) *Any condition that may significantly threaten the health or*  
22 *safety of public safety employees or the public if the disclosure was*  
23 *made for the purpose of remedying that condition.*

24 (c) *“Illegal order” means any directive to violate or assist in*  
25 *violating a federal, state, or local law, rule, or regulation, or any*  
26 *order to work or cause others to work in conditions outside of their*  
27 *line of duty that would unreasonably threaten the health or safety*  
28 *of employees or the public.*

29 832.92. (a) *A local peace officer who discloses to a*  
30 *supervisor, sheriff, or chief of police information about improper*  
31 *governmental activity within their department, improper use of*  
32 *force, receipt of an illegal order, and who has reasonable cause to*  
33 *believe he or she has been retaliated against for that disclosure,*  
34 *may file a complaint with the Attorney General.*

35 (b) *The Attorney General shall accept complaints filed*  
36 *pursuant to subdivision (a) for action or referral to a local agency*  
37 *in a method and format prescribed by the Attorney General.*

38 832.93. (a) *Any person who intentionally engages in an act*  
39 *of retaliation against a peace officer for having reported unlawful*  
40 *conduct, an illegal order, improper governmental activity, or*

1 *improper use of force by another peace officer is punishable by a*  
2 *fine not to exceed ten thousand dollars (\$10,000), imprisonment*  
3 *in a county jail for a period not to exceed one year or in the state*  
4 *prison, or by both that fine and imprisonment.*

5 *For purposes of this section, “retaliation” includes, but is not*  
6 *limited to, an instance in which a supervising employee of a local*  
7 *law enforcement agency directly or indirectly uses or attempts to*  
8 *use his or her official authority or influence for the purpose of*  
9 *intimidating, threatening, coercing, commanding, or attempting*  
10 *to intimidate, threaten, coerce, or command any person, for the*  
11 *purpose of interfering with their rights. “Use of official authority*  
12 *or influence” means promising to confer, or conferring, any*  
13 *benefit; effecting, or threatening to effect, any reprisal; or taking,*  
14 *or directing others to take, or recommending, processing, or*  
15 *approving, any personnel action, including, but not limited to,*  
16 *appointment, promotion, transfer, assignment, performance*  
17 *evaluation, suspension, or other disciplinary action.*

18 *(b) In addition to all other penalties provided by law, any*  
19 *person who intentionally engages in acts of retaliation against a*  
20 *peace officer for having reported unlawful conduct, an illegal*  
21 *order, improper governmental activity or improper use of force by*  
22 *a peace officer shall be liable in an action for civil damages or*  
23 *injunctive relief brought against him or her by the injured party as*  
24 *well as reasonable attorneys fees.*

25 *832.94. (a) Nothing in this chapter shall be construed to*  
26 *authorize an individual to disclose information otherwise*  
27 *prohibited by or under law.*

28 *(b) Nothing in this chapter shall limit any authority conferred*  
29 *upon the Attorney General, District Attorney, County Sheriff,*  
30 *Police Chief, or any other department or agency of government to*  
31 *investigate any matter.*

32 *(c) Nothing in this chapter shall be deemed to diminish the*  
33 *rights, privileges, or remedies of any employee under any other*  
34 *federal or state law or under any employment contract or*  
35 *collective bargaining agreement.*

36 ~~SEC. 2.~~

37 *SEC. 3. No reimbursement is required by this act pursuant to*  
38 *Section 6 of Article XIII B of the California Constitution because*  
39 *the only costs that may be incurred by a local agency or school*  
40 *district will be incurred because this act creates a new crime or*

1   infraction, eliminates a crime or infraction, or changes the penalty  
2   for a crime or infraction, within the meaning of Section 17556 of  
3   the Government Code, or changes the definition of a crime within  
4   the meaning of Section 6 of Article XIII B of the California  
5   Constitution.

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